

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Hannah Sampson	Team: Squad #6	CCRB Case #: 201610580	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 12/23/2016 10:31 PM	Location of Incident: 1634 Broadway (In front of Winter Garden Theatre)	Precinct: 18	18 Mo. SOL 6/23/2018	EO SOL 6/23/2018	
Date/Time CV Reported Fri, 12/23/2016 11:55 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 12/29/2016 11:26 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Momen Attia	18938	932277	MTN PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Steven Fabb	31980	933515	MTN PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Momen Attia	Abuse: Police Officer Momen Attia interfered with § 87(2)(b) s use of a recording device.	
B.POM Momen Attia	Abuse: Police Officer Momen Attia frisked § 87(2)(b)	
C.POM Momen Attia	Abuse: Police Officer Momen Attia searched § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

§ 87(2)(g)

On December 23, 2016, § 87(2)(b) filed this complaint with IAB via telephone, generating original log number 16-44990. This complaint was received at the CCRB on December 29, 2016.

On December 23, 2016, at approximately 10:31 P.M., § 87(2)(b) was resting on his pedicab in front of the Winter Garden Theatre at 1634 Broadway in Manhattan when he was approached by PO Momen Attia of the Midtown North Precinct. PO Attia told § 87(2)(b) that he could not stand in front of the theatre. Shortly thereafter, PO Steven Fabb, also of the Midtown North Precinct, approached and stood with PO Attia. § 87(2)(b) took his phone out of his pocket and began filming the officers. As soon as § 87(2)(b) started filming, PO Attia placed him in handcuffs (**Allegation A**). After § 87(2)(b) was handcuffed, PO Attia frisked and searched him (**Allegations B and C**). Once § 87(2)(b)'s military ID was verified, he was released without a summons. § 87(4-b), § 87(2)(g)

There is video footage for this incident. Footage was provided by § 87(2)(b) and was obtained from the Lower Manhattan Security Initiative (LMSI) camera at the intersection of West 51st Street and Broadway in Manhattan [BRs 04, 05, 06, and 07, respectively]. The footage from the LMSI camera captures the entire incident and partially captures the allegations above.



201610580_20170105_1354_DM.mp4



201610580_20170208_1121_DM.mp4

Mediation, Civil and Criminal Histories

- On January 24, 2017, § 87(2)(b) accepted mediation. On February 8, 2017, this case was returned to investigation as DAO rejected.
- A Notice of Claim was submitted on June 20, 2017, and will be added to the case file upon receipt.
- § 87(2)(b), § 87(2)(c)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint [BR 01].
- PO Attia has been a member of the service for 13 years and has seven other CCRB allegations against him, none of which have been substantiated.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) stated that as soon as he began filming, PO Attia started handcuffing him [BR 03]. PO Attia stated that he spoke to PO Fabb about what to do and they decided

together to handcuff § 87(2)(b) [BR 08]. PO Fabb said that it was likely PO Attia's decision to place § 87(2)(b) in handcuffs and said that there was no consultation between him and PO Attia as to whether or not § 87(2)(b) should be handcuffed [BR 09].

Footage provided by § 87(2)(b) and surveillance footage from the LMSI camera shows that PO Attia was the first officer to step towards § 87(2)(b) to begin handcuffing him.

§ 87(2)(g)

Allegations not pleaded

- **Abuse of Authority:** A vehicle stop allegation has not been pled against PO Attia. Photos of the incident location and video footage from the incident show that § 87(2)(b) was unlawfully parked in a no standing zone prior to PO Attia's approach; § 87(2)(g)
- **Abuse of Authority:** A threat to issue a summons has not been pled against PO Attia because § 87(2)(b)'s pedicab was unlawfully parked in a no standing zone. § 87(2)(g)

Allegation A – Abuse of Authority: Police Officer Momen Attia interfered with § 87(2)(b)'s use of a recording device.

Allegation B – Abuse of Authority: Police Officer Momen Attia frisked § 87(2)(b)

It is undisputed that § 87(2)(b) repeatedly reached towards his pockets, that PO Attia handcuffed § 87(2)(b) once he began recording, and that PO Attia subsequently frisked him.

§ 87(2)(b) stated that he was resting on his pedicab in front of the Winter Garden Theatre in Manhattan when PO Attia approached and told him he could not park there [BR 03]. Shortly thereafter, PO Fabb arrived. § 87(2)(b) had his phone in his hand and had been listening to music. After giving PO Attia his identification, § 87(2)(b) went to turn his music off. At that point, PO Attia took § 87(2)(b)'s phone and put it in § 87(2)(b)'s left pocket. It was not long before § 87(2)(b) took his phone out of his pocket again. PO Attia took the phone again and either put it back in § 87(2)(b)'s pocket or in his hand. § 87(2)(b) got scared because PO Attia started acting aggressively. § 87(2)(b) did not recall PO Attia's exact words, but thought he said something to the effect of "Don't take a video" or "Put your phone away." § 87(2)(b) then took his phone back out and started filming the officers. As soon as § 87(2)(b) began filming, PO Attia placed him in handcuffs. During his statement with the CCRB, § 87(2)(b) motioned as though PO Attia frisked him on his chest and on top of his legs after he was handcuffed. However, § 87(2)(b) then said that he did not recall if PO Attia frisked him because he was nervous and was thinking about his arms which were hurting. § 87(2)(b) was wearing a navy blue fur hooded winter coat that falls to about hip length, black boots, and possibly jeans. § 87(2)(b) did not remember what shirt he was wearing. § 87(2)(b) remembered having his keys in his pocket but did not remember if he had anything else.

PO Attia stated that § 87(2)(b) continuously put his hands in and out of his pockets, despite the fact that PO Attia told him to keep his hands from his pockets three to five

times [BR 08]. § 87(2)(b) complied for a few seconds but would then put his hands back into his pockets. § 87(2)(b) did not say why he was reaching into his pockets. § 87(2)(b)'s repeated movements towards his pockets despite instructions to keep his hands out of his pockets elevated PO Attia's level of concern and caused him to fear for his safety. While PO Attia was speaking to PO Fabb about what to do with § 87(2)(b), § 87(2)(b) reached into his pocket and removed something that looked like a cell phone. § 87(2)(b) pointed the flash at PO Attia. § 87(2)(b) did not have the cell phone in his hands prior to this point. PO Attia and PO Fabb were standing five to 10 feet from § 87(2)(b) when he removed the cell phone. PO Attia spoke to PO Fabb about what to do and they decided to put § 87(2)(b) in handcuffs to better control the situation because § 87(2)(b) refused multiple instructions to keep his hands from his pockets. This was the only reason why § 87(2)(b) was handcuffed. PO Attia was not paying much attention to whether or not § 87(2)(b) was filming at the time he was handcuffed and said that he does not have a problem with people filming him. PO Attia did not recall if he observed any bulges on § 87(2)(b)'s clothing and said that he did not know if he believed if § 87(2)(b) had a weapon on him. PO Attia did not recall if he frisked § 87(2)(b) and did not know if he observed anything about § 87(2)(b)'s clothing or behavior that would have justified a frisk. PO Attia believed § 87(2)(b) was wearing dark, winter clothing. PO Attia did not recall if he ever considered § 87(2)(b) to be under arrest. PO Attia was shown footage from IA 71 [BRs 06 and 07]. Footage was paused the moment § 87(2)(b) began filming. PO Attia stated that there was nothing about that particular moment that caused him to fear for his safety. Upon viewing the footage, PO Attia stated that it appeared as though he was moving around § 87(2)(b)'s body, possibly frisking him. PO Attia did not have an independent recollection of the frisk and stated that the footage did not refresh his recollection of the incident.

PO Fabb was consistent that § 87(2)(b) repeatedly put his hands in his pockets despite PO Attia's instructions to keep his hands from his pockets, that § 87(2)(b) did not provide an explanation as to why he was reaching into his pockets, and that § 87(2)(b) was wearing winter clothing [BR 09]. PO Fabb did not recall if he observed any bulges on § 87(2)(b)'s clothing and did not recall if he had reason to believe § 87(2)(b) possessed a weapon. PO Fabb was also consistent that § 87(2)(b)'s noncompliance with PO Attia's directives elevated his level of suspicion. PO Fabb did not recall if § 87(2)(b) was filming or using his phone during the incident and did not think PO Attia touched § 87(2)(b)'s phone at any point. PO Fabb did not recall observing PO Attia interfere with § 87(2)(b)'s filming of the incident. PO Fabb said that filming by the public does not cause concern unless they get too close or shine the light such that it blinds the officers or obstruct their vision. Filming is permissible unless it causes a dangerous situation. PO Fabb added that § 87(2)(b)'s ID needed to be verified and that he could have been arrested for the observed violations if he did not have a valid ID. Prior to viewing surveillance footage from the incident, PO Fabb did not recall if PO Attia frisked § 87(2)(b) during this incident but stated that if someone is handcuffed, they typically check the individual's immediate/lungable area to ensure there are no weapons that could be used against himself or the officers. This area would include the individual's waistband and reachable pockets. PO Fabb stated that he believed this would have been performed for § 87(2)(b)'s safety and the officers' safety. Upon viewing the surveillance footage from the incident, PO Fabb said that the bright light from § 87(2)(b)'s phone was aimed at his and PO Attia's faces, which was problematic because the light could blind them [BRs 06 and 07]. PO Fabb estimated that they were standing six to seven feet away from § 87(2)(b) when he

began filming. PO Fabb also said that, upon viewing the footage, it looked like PO Attia might be checking § 87(2)(b)'s immediate "grab area," as described above.

§ 87(2)(b) provided video footage from this incident [BRs 04 and 05]. The footage shows that both PO Attia and PO Fabb were standing several feet away from § 87(2)(b) when he began recording. PO Fabb appears to be looking down at § 87(2)(b)'s ID. It was not until after § 87(2)(b) began filming that PO Attia approached him and handcuffed him. Upon approaching § 87(2)(b) PO Attia says, "Take this away." The footage does not capture the subsequent handcuffing and frisk.



201610580_20170105_1354_DM.mp4

Surveillance footage from the LMSI camera shows that both officers stepped away from § 87(2)(b) before he started filming [BRs 06 and 07]. Once § 87(2)(b) began filming, PO Attia stepped towards him and handcuffed him. Video footage from the incident does not clearly capture the claim that § 87(2)(b) continuously reached into his pockets throughout this incident; it does, however, show PO Attia frisking § 87(2)(b).



2017-06-22_14-06-55.mp4

PO Attia's memo book entry shows that § 87(2)(b) continuously put his hands in his pockets and did not listen to PO Attia's instructions to keep still and not put his hands in his pockets [BR 10]. PO Fabb's memo book entry is consistent that § 87(2)(b) kept moving his hands to different pockets and that handcuffs were utilized for officer safety [BR 11].

As per NYPD Finest Message RE: Recording of Police Action by the Public (2014), members of the public are legally allowed to record police interactions, unless those persons interfere with police operations. Members may take action only if the person interferes with the operations or safety of the members of the service or the public [BR 12].

NYPD Patrol Guide Section 212-11 states that in order to conduct a lawful frisk, officers must reasonably suspect that the person is armed and dangerous [BR 13].

According to People v. Robinson, 278A.D.2d 808, a civilian's repeated movements towards a pocket despite the officer's request that he remove his hand from his pocket is sufficient justification for a lawful frisk to protect officer safety [BR 14].

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation C – Abuse of Authority: Police Officer Momen Attia searched § 87(2)(b)

§ 87(2)(b) stated that once he was handcuffed, PO Attia entered both the upper and lower pockets on the right side of his coat and believed PO Attia also put his phone in his lower left pocket. PO Attia removed § 87(2)(b)'s keys and then put them back. § 87(2)(b) did not recall if he had anything else in his pockets.

PO Attia stated that § 87(2)(b) still had his phone in his hands as he was being handcuffed. PO Attia might have put § 87(2)(b)'s phone back into one of his pockets. Aside from this action, PO Attia did not recall if he entered any of § 87(2)(b)'s pockets. PO Fabb did not recall observing PO Attia enter any of § 87(2)(b)'s pockets. Neither officer's recollection of the allegation changed upon viewing footage from the LMSI camera.

Video footage provided by § 87(2)(b) does not capture this allegation.

Surveillance footage from the LMSI camera does not clearly confirm or deny if PO Attia searched § 87(2)(b) during this incident.



201610580_20170622_1015_DM.mp4

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

Squad: 6

Investigator: _____ _Hannah Sampson_____ _____
Signature Print Date

Squad Leader: _____ _Jessica Peña_____ _____
Title/Signature Print Date

Reviewer: _____ _____ _____
Title/Signature Print Date